

Committee on Judicial Ethics
Teleconference
Thursday, May 21, 2015

Members present via teleconference: Judge Christine E. Keller, Chair, Judge Maureen D. Dennis, Vice Chair, Judge Barbara M. Quinn, Professor Sarah F. Russell and Judge Angela C. Robinson. Staff present: Attorney Martin R. Libbin, Secretary and Attorney Viviana L. Livesay, Assistant Secretary.

MINUTES

- I. With the above noted Committee members in attendance, Judge Keller called the meeting to order at 9:31 a.m. Although publicly noticed, no members of the public were present.
- II. The Committee members present, (with the exception of Judge Robinson who abstained), approved the April 16, 2015 meeting minutes.
- III. The Committee discussed **Informal JE 2015-10** concerning whether a Judicial Official may complete a form containing a confidential statement of reference for the recertification of an attorney by the National Board of Trial Advocacy (hereinafter, NBTA).

The form indicates that the Judicial Official's name either was submitted by the applicant or was selected by NBTA as a judge likely to be familiar with the applicant's work. The form also notes, in relevant part, that "The information requested by this form will only be used for the purpose of evaluating the applicant's qualifications for (re)certification. Any statement that you make will be treated as a confidential communication; statements of reference are not made available to the applicants and it is required that each applicant waive the right to review the statements of reference." The completed reference is sent directly by the Judicial Official to the National Board of Legal Specialty Certification, which NBTA is a part of. The National Board of Legal Specialty Certification is the certifying board or entity approved by the Connecticut Legal Specialization Screening Committee to certify lawyers as specialists in civil trial practice and criminal law. The criteria for recertification includes that the applicant demonstrate substantial involvement in the area of specialty during the preceding 5 years by showing either that the applicant has actively participated as counsel in one or more cases for a total of at least 15 trial days, participated in 40 litigation matters or 60 performances at which

testimony was taken or argument made, or a combination of the above which demonstrates substantial involvement. The applicant must include 6 references, of which at least 2 must be judges before whom the applicant appeared in the past 3 years and at least 3 lawyers. In order to be considered for recertification, at least 1 of the judges and at least 2 of the attorneys must complete and submit the forms. The applicant's website states that the applicant has tried many cases.

The questionnaire asks, inter alia, whether the reference is a judge before whom the applicant appeared in proceedings in the past 3 years, how the reference is associated with the applicant, whether there are any incidents in the applicant's law practice known directly or indirectly that reflect a lack of proficiency, dedication, conviction of a felony or lesser offense involving moral turpitude or misconduct, charges of a serious crime, suspension, disbarment, etc. The reference also is asked to rate the applicant on a scale of 1 – 5 on the factors of preparation, resourcefulness, consideration of clients, knowledge of substantive law, effectiveness of presentation, reputation in the legal community and knowledge of procedure, as well as to provide any additional comments.

Rule 1.2 states that a judge shall act at all times “in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary and shall avoid impropriety and the appearance of impropriety. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated this Code or engaged in other conduct that reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge.”

Rule 1.3 states that a judge “shall not use or attempt to use the prestige of judicial office to advance the personal or economic interests of the judge or others or to allow others to do so.”

Rule 2.1 states that the judicial duties of a judge take precedence over all of a judge's personal and extrajudicial activities.

Rule 2.11 states that a judge “shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned” including, but not limited to, when the judge has a personal bias or prejudice concerning a party's lawyer.

In reaching its conclusion, the Committee considered its prior opinions in [JE 2009-05](#) (subject to various conditions, it was permissible for a Judicial Official to provide a letter of support for an attorney who was nominated to receive a professional service award from a private organization), [JE 2009-15](#) (Juvenile Matters judges should decline, in accordance with Canon 2, to serve as evaluators or references for attorneys seeking

contracts with the Commission on Child Protection to provide representation to children and indigent respondents in neglect and termination of parental rights proceedings), [JE 2011-17](#) (a Judicial Official should not provide a peer review of an attorney for Martindale-Hubbell), [JE 2012-16](#) (subject to various conditions, a Judicial Official may complete and submit a questionnaire about a lawyer who is being considered for inclusion in a highly selective international legal honorary society), [JE 2013-40](#) (subject to various conditions, a Judicial Official may serve as a Chambers and Partners “referee” for a law firm that represented the Judicial Official in a few cases prior to his/her appointment to the bench) and [JE 2014-20](#) (a Judicial Official should decline to complete a post-trial survey for a non-profit organization, which the organization wished to use the surveys as performance evaluations for its attorneys).

Based upon the facts provided, including that the information is maintained confidentially, the applicant waives the right to review the statements of reference, the ability of the NBTA to solicit comments from judges and attorneys beyond those whose names are submitted by the applicant, the applicant has tried many cases, and the NBTA is a Connecticut authorized certifying entity, the Committee unanimously advised that the Judicial Official may complete the survey subject to the conditions imposed in [JE 2009-05](#), [JE 2012-16](#) and [JE 2013-40](#), to wit:

- (1) The Judicial Official has personal knowledge of the applicant’s qualifications that are relevant to recertification. Rule 1.3, cmt. (2);
- (2) The applicant is not a relative of the Judicial Official within the meaning of the Code or C.G.S. § 51-39a;
- (3) The Judicial Official indicates that the opinions expressed represent the personal opinions of the Judicial Official. Rule 1.3, cmt. (2);
- (4) Neither the applicant nor any member of the applicant’s firm has an appearance before the Judicial Official at the time the form is completed or for a reasonable period, under the circumstances, before or after the form is completed provided that for appearances after the form is completed, the Judicial Official may disclose that he or she completed the survey and in accordance with Rule 2.11 (c), request the parties and their lawyers to consider, outside the presence of the Judicial Official and court personnel, whether to waive disqualification; and
- (5) If the Judicial Official believes that recusal would be required in order to comply with condition (4) because his or her fairness would

be impaired, and that recusal is likely to be frequent, the Judicial Official should not complete the form. Rule 2.1.

- IV. The Committee discussed **Informal JE 2015-11** concerning whether a Judicial Official may provide a letter of reference to the Attorney General's Office for a person that works for the Judicial Official as a temporary assistant clerk (hereinafter, TAC).

The Judicial Official has personal knowledge of the employee and his/her qualifications as an attorney. The employee is not a relative, as defined in C.G.S. § 51-39a or the Code of Judicial Conduct. The attorney General's Office regularly appears before the Judicial Official. The application is not for a specific department within the Office of the Attorney General. While the Attorney General's Office did not contact the Judicial Official directly for the reference, the TAC provided the Judicial Official with a form from the Attorney General's Office which is to be completed and returned directly to the Attorney General's Office as part of the application process. The form requests candid comments regarding specific areas, such as communications skills, analytic ability, etc.

Rule 1.2 of the Code states that a judge "should act at all times in a manner that promotes public confidence in the ... impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated this Code or engaged in other conduct that reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge."

Rule 1.3 of the Code states that a judge "shall not use or attempt to use the prestige of judicial office to advance the personal or economic interests of the judge or others, or allow others to do so." The Commentary to Rule 1.3 states, in relevant part, as follows:

(2) A Judge may provide a reference or recommendation for an individual based on the judge's personal knowledge. The judge may use official letterhead if the judge indicates that the reference is personal and if the use of the letterhead would not reasonably be perceived as an attempt to exert pressure by reason of judicial office.

Rule 2.1 states that the judicial duties of a judge take precedence over all of a judge's personal and extrajudicial activities.

Rule 2.11 states, in relevant part, that a judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned.

Canon 4 states that “a judge shall not engage in political or campaign activity that is inconsistent with the independence, integrity, or impartiality of the judiciary.”

In reaching its conclusion, the Committee considered its prior decisions in [JE 2008-01](#) (subject to various conditions, a judge may provide a recommendation to an existing court employee applying for another Judicial Branch position), [JE 2008-03](#) (subject to various conditions, a judge may complete a letter of recommendation for a former law clerk applying for a position with the Attorney General’s Office, even if the Attorney General’s Office has appearances in various cases before the judicial official), [JE 2008-10](#) (a judge may not respond to a request from the Judicial Selection Commission requesting a letter of reference for a relative), [JE 2008-26](#) (subject to various conditions, a judge may provide a recommendation specific to the position applied for to a court employee seeking a position with the Judicial Branch in the judicial district where the Judicial Official is currently assigned), [JE 2009-08](#) (subject to various conditions, a judge may serve as a reference for an applicant to a municipal police department), [JE 2009-13](#) (a judge may not provide a letter of recommendation to two US Senators with respect to a person applying for a position with the federal court, but may be listed as a reference and respond if contacted), [JE 2011-01](#) (subject to various conditions, an attorney may list a judge as a reference on the attorney’s Judicial Selection Commission application), [JE 2011-18A & 18B](#) (a retiring judge may seek letters of recommendation from judges familiar with his or her work, but the retiring judge must wait until his or her departure from the bench to do so), [JE 2011-19](#) (a judge should not voluntarily contact the Governor’s Legal Counsel to recommend another judge for higher office, but subject to various conditions may serve as a reference), [JE 2012-27](#) (subject to various conditions, a judge may provide a letter of recommendation to the Office of Chief Public Defender for an attorney applying for a supervisory public defender position even though other public defenders appeared before the Judicial Official, and noting that while the recommendation is for a government position, the proposed activity does not involve inappropriate political activity), and [JE 2013-32](#) (subject to various conditions, a Judicial Official may authorize an Executive Branch employee to include the name of the Judicial Official on the employee’s resume/letter of application for a position at another Executive Branch agency).

Based upon the facts provided, the Committee unanimously determined that while a Judicial Official may not provide a recommendation in connection with government employment that might suggest inappropriate political activity, that prohibition is not applicable on the facts of this inquiry

and therefore the Judicial Official may provide a reference or recommendation subject to the following conditions:

- (1) The recommendation is based on personal knowledge of the applicant's qualifications. Rule 1.3, cmt. (2);
- (2) The applicant is not a relative within the meaning of the Code or General Statutes § 51-39a;
- (3) The Judicial Official indicates that the opinions expressed represent the personal opinions of the Judicial Official. Rule 1.3, cmt. (2);
- (4) The applicant does not have an appearance before the Judicial Official at the time the recommendation is provided, did not have an appearance before the Judicial Official for a reasonable period of time, under the circumstances, prior to the completion of the recommendation, and is not expected to have an appearance before the Judicial Official for a reasonable period of time, under the circumstances, after the Judicial Official completes the recommendation, provided that for appearances after the recommendation is provided, the Judicial Official may disclose that he or she provided a recommendation and in accordance with Rule 2.11 (c), request the parties and their lawyers to consider, outside the presence of the Judicial Official and court personnel, whether to waive disqualification. The Committee noted that while normally the above limitations would apply to the firm to which the recommendation was provided as well as to the attorney for whom the recommendation was provided, in the case of large public employers (the Division of Criminal Justice, the Public Defender Services Commission and the Office of the Attorney General), it only applies to the attorney for whom the recommendation was provided;
- (5) If the Judicial Official believes that recusal would be required in order to comply with condition (4) because his or her fairness would be impaired, and that recusal is likely to be frequent, the Judicial Official should not provide the letter of recommendation. Rule 2.1; and
- (6) The letter should be specific to the position being sought (see [JE 2008-26](#)).

V. The meeting adjourned at 9:44 a.m.